

**IN THE UNITED STATES DISTRICT
COURT FOR THE EASTERN DISTRICT
OF TEXAS TYLER DIVISION**

WESLEY V. GIBBS, JR.,

Plaintiff,

v.

UNITED STATES OF
AMERICA,

Defendant.

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Case No. 6:20-cv-178-JDK-KNM

**ORDER ADOPTING REPORT AND RECOMMENDATION
OF THE UNITED STATES MAGISTRATE JUDGE**

Movant Wesley Vernon Gibbs, Jr., a former inmate within the Texas Department of Criminal Justice (TDCJ) proceeding *pro se*, filed this motion to vacate, set aside, or correct his federal sentence pursuant to 28 U.S.C. § 2255. The cause of action was referred to United States Magistrate Judge, the Honorable K. Nicole Mitchell, for findings of fact, conclusions of law, and recommendations for the disposition of the case.

On November 17, 2020, Judge Mitchell issued a Report (Docket No. 13) recommending that Movant's case be dismissed, without prejudice, for his failure to comply with an order of the Court and the failure to prosecute. A copy of this Report was sent to Movant at his last-known address, with an acknowledgment card. The docket reflects, once again, that the order was returned as "undeliverable," with a notation of "RTS dis." Docket No. 14. To date, Movant has neither filed objections to the Report nor communicated with the Court since July 2020.

Because objections to Judge Mitchell's Report have not been filed, Movant is barred from de novo review by the District Judge of those findings, conclusions, and recommendations and, except upon grounds of plain error, from appellate review of the unobjected-to proposed factual findings and legal conclusions accepted and adopted by the district court. *Douglass v. United Servs. Auto. Ass'n*, 79 F.3d 1415, 1430 (5th Cir. 1996) (en banc).

The Court has reviewed the pleadings in this cause and the Report of the Magistrate Judge. Upon such review, the Court has determined that the Report of the Magistrate Judge is correct. *See United States v. Wilson*, 864 F.2d 1219, 1221 (5th Cir. 1989) (holding that where no objections to a Magistrate Judge's Report are filed, the standard of review is "clearly erroneous, abuse of discretion and contrary to law."). Accordingly, it is:


ORDERED that the Report of the United States Magistrate Judge (Docket No. 13) is **ADOPTED** as the opinion of the Court;

ORDERED that the above-styled civil action is hereby **DISMISSED**, without prejudice, for Movant's failure to comply with an order of the Court and the failure to prosecute;

ORDERED that Movant is **DENIED** a certificate of appealability *sua sponte*; and

ORDERED that any and all motions which may be pending in this action are hereby **DENIED** as **MOOT**.

So **ORDERED** and **SIGNED** this 4th day of **January, 2021**.


JEREMY D. KERNODLE
UNITED STATES DISTRICT JUDGE